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STATEMENT  
OF  
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ON H.R. 4394  
BEFORE THE  
SUBCOMMITTEE ON COMPENSATION  
AND EMPLOYEE BENEFITS  
COMMITTEE ON POST OFFICE AND  
CIVIL SERVICE  
UNITED STATES HOUSE OF REPRESENTATIVES



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Madam Chair and Members of the Subcommittee:

I appreciate the opportunity to comment on H.R. 4394, the "Pay Continuity Act", on behalf of Comptroller General Bowsher. As you observed in your letter of invitation to Mr. Bowsher, the General Accounting Office has had a long standing concern with the problems created by "funding gaps"--that period of budgetary limbo when one appropriation has expired and no action has been taken by the Congress to provide a new one.

The most recent funding gap crisis was triggered last November by President Reagan's veto of a Continuing Resolution to extend the availability of appropriations for most executive branch agencies for fiscal year 1982. While the terms of the bill were still being worked out, the President ordered a partial shutdown of all affected agencies and offices. Thousands of employees were sent home from work for half a day and then later paid for the time they were not at work. Our Office reported to a number of Congressional Committees and members, including the sponsor of H.R. 4394, Mr. Hoyer, on available estimates of the dollar costs involved. Although agency responses were very fragmented, the total appeared to be in the neighborhood of \$8.1 million. (B-202135, December 10, 1981).

Of course, direct payroll costs do not begin to reflect the less tangible and not so readily ascertainable costs attributable to lost productivity and low morale, because every delayed paycheck may precipitate a personal financial crisis for the employees affected. These costs

were discussed in a comprehensive GAO Report to the Congress entitled "Funding Gaps Jeopardize Federal Government Operations", issued March 3, 1981 (PAD 81-31). I will not take the Subcommittee's time today to repeat the information in that Report except to note that funding gaps are not a recent phenomenon. Over the past 20 years, 85 percent of all Federal appropriations have been passed after the beginning of the fiscal year, necessitating some 74 continuing resolutions.

But even continuing resolutions are ineffectual to prevent funding gaps if they are used as a vehicle for imposing controversial spending limitation riders. For example, in 1968, an impasse developed over an administration request for a 10 percent surcharge on personal and corporate income taxes and an equally firm conviction by some members of the Congress that holding back Federal spending was a better way to reduce budget deficits and curb inflation. The result, in any case, was 5 separate funding gaps, totalling 65 days and affecting 10 departments.

Before 1980, most Federal agencies continued to operate, at least on a minimal level, even during the period of expired appropriations, because it seemed clear that the Congress could not have intended to plunge such a large part of the Government into chaos while the funding measures were being debated. The General Accounting Office shared this view, as we stated in an opinion letter to your predecessor, Mrs. Spellman, on March 3, 1980. (B-197841) However, we acknowledged that during funding

gaps agency heads were violating a venerable funding statute known as the "Antideficiency Act" (31 U.S.C. 665) whenever they permitted an employee to report for work. The Federal manager was incurring an obligation to pay the employee his salary at a time when there were no appropriations available to liquidate that obligation. When an officer or employee knowingly and deliberately violates the Antideficiency Act, he is guilty of a criminal offense.

At this point, former Attorney General Benjamin R. Civiletti stepped in and warned all Federal managers that from that time on, the Justice Department intended to consider prosecution of any Federal manager who violated the Act by continuing to operate his agency during a funding gap.

(Date) This opinion precipitated widespread confusion and consternation, with devastating effects on normal Government operations. These effects have survived the departure from Office of Mr. Civiletti.

There have been a number of legislative solutions proposed in the last few years to avert the funding gap crisis. Your Subcommittee considered at least four proposals in the 96th Congress to guarantee pay for Federal employees during periods of expiring appropriations. Three of these (H.R. 5995, 5955, and 5704) were very similar to H.R. 4394 now being considered. We also provided comments on H.R. 974, 97th Congress to your full Committee on May 14, 1981. All these bills provide a permanent indefinite appropriation of whatever sums are necessary to assure that civilian and

military personnel can continue to receive their pay even though no other appropriation for the pay has been enacted.

We are gratified to note that a number of the suggestions we made in providing your Subcommittee with comments on the previous bills have been incorporated into H.R. 4394. There are still a few points that need clarification. However, before discussing the specifics of the bill, I must point out the two principal weaknesses of this type of legislation.

Of major importance is the fact that H.R. 4394 and its ilk provides, at best, only a piecemeal solution to a much larger problem. I don't mean to suggest that protection of Federal employees' paychecks is not critically important. I am well aware that for many agencies, salaries and related expenses constitute the largest part of the budget. However, there is another long-standing appropriation law on the books, found at 31 U.S.C. 628, which states, (in paraphrase,) that an appropriation may only be used for the purpose for which it was appropriated. This means that an appropriation which is made available specifically for pay and related allowances cannot ordinarily be used for utilities, rent, postage, supplies and other services or equipment that are needed to enable the agency to continue to function. For this reason, all our previous reports on this type of legislation have stated that the fatal flaw is the lack of comprehensiveness of the appropriation's scope.

Quite candidly, I do not entirely agree with our previous position. The GAO has long applied a rule of reason in construing 31 U.S.C. 628, which we call "the necessary expense" concept. I think it might be possible to find--particularly if the Committee reports contain some supporting language to this effect--that an appropriation made for the purpose of keeping an employee on the job must necessarily include expenses necessary to enable him to do his job--for example, heat, light, telephone service, office supplies, and so on.

However, there are limits to the flexibility of the necessary expenses concept too. Because it is not at all clear how far the appropriation language can be stretched before we bump our heads on the Constitutional admonition of Article 1, section 9, (that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law") we continue to recommend language that covers "such expenses as may be necessary to continue the operation of the agency at the level of operations in effect prior to the period of expired appropriations."

The other principal drawback of H.R. 4394 is the fact that it not only authorizes each agency to incur obligations, but also to expend its funds to liquidate the obligations. On the plus side is the fact that it would eliminate the demoralizing effect of payless pay days and the expenses of split pay checks. This is a very large "plus", of course. The permanent

appropriation would automatically become available, without the need for further Congressional action, as soon as one appropriation expired without another measure--regular or temporary--having been enacted to take its place.

On the other hand, the Congress would be giving up a very important prerogative, --at least for the short term--control of the amount and the uses of the appropriations provided to each agency. Moreover, the Congress might lose the sense of urgency that makes it less likely to prolong debate on politically sensitive and perhaps non-germane funding riders attached to the appropriations measures it is considering. If only the incurring of obligations but not the making of expenditures is permitted, the spectre of financial hardship for thousands of employees as well the disruption of many critical programs (for example, benefit programs not funded from separate trust funds) might provide the necessary incentives for more expeditious appropriation enactments.

Now to return to the specifics of H.R. 4394.

Proposed section 5527(b) and its counterpart for military employees, proposed section 1012(b), limit continuation of pay to employees or members, respectively, who remain in the same position or duty assignment that they were in immediately before the expiration of appropriations. Understandably, the drafters of these sections wish to preserve the status quo with respect to pay until regular appropriations or another continuing resolution is enacted. On the other hand, this language would effectively preclude transfers

or other changes of job or duty assignments after expiration of appropriations, even at the same rate of pay, because the affected employee or member would be ineligible for continuation of pay. This appears to be an unnecessary limitation on the flexibility of agency managers.

We recommend instead that lines 13 and 14 on page 3 of the bill be amended to read:

"period of expired appropriations and who  
continues to be employed by the same agency."

A similar amendment for military members is recommended for lines 5-7, page 5 as follows:

"immediately preceding the period of expired  
appropriations and who continues in such status."

Our previous reports on similar legislation also recommended inclusion of two important provisions, for reasons equally applicable to H.R. 4394. As drafted, the bill does not state a period of availability for the funds to be drawn from the permanent appropriation. While we are sure that the intent is to limit availability to the period of expired appropriations, it would be advisable to state this explicitly.



Of even greater concern is the absence of a "chargeback" provision--that is, a provision requiring any amounts obligated or expended from the permanent appropriation to be charged to the agency's regular or continuing appropriation, once it is enacted. Otherwise, should the Congress forget to deduct these amounts at the time it completes work on the agency's appropriation, there will be an excess of funds made available for salaries.

We have already suggested language to the full Committee to accomplish these amendments in our May 14, 1981 report on H.R. 974.

In summary, we applaud the purpose of this bill which would do much to relieve the misery and uncertainty that afflicts the Federal work force with increasing frequency these days around appropriations time. However, I can't help observing that the only true solution is a greater commitment to enact basic appropriations for Government agencies before the expiration of the fiscal year, abandoning the admitted Congressional prerogative to hold all the funds hostage because some aspects of an agency's program are controversial.

Finally, although the intent of bills like H.R. 4394 is admirable and much appreciated, a timely enacted Continuing Resolution is still the best stop-gap funding measure of all, in the absence of appropriations.